

DA

U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

APR 12 2004

FILE: LIN 04 010 53970

Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an artist management company. The beneficiaries are members of a 13-member musical group. The principal member of the group is named Louis Awilo Longomba. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiaries under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(p)(iii) for a four-month period.

A consultant by the name of Paul Trautman and the petitioner signed a Form G-28, Notice of Entry of Appearance as Attorney or Representative, and submitted it to CIS with the instant petition. M [REDACTED] is not an attorney or an authorized representative as required by the regulation at 8 C.F.R. § 292.1(a), so his appearance will not be recognized in these proceedings.

In a request for additional evidence, the director requested that the petitioner submit evidence to establish that the beneficiary group performs as a culturally unique entertainment group. The director requested evidence that all of the performances or presentations would be culturally unique events. The director also requested evidence that each member of the beneficiary ensemble had performed together as a group. The petitioner responded to the director's request for additional evidence.

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries seek admission in order to participate solely in cultural events or that the venue of the performances would all be culturally unique events. The director further found that the record was insufficient to establish that the thirteen named beneficiaries had ever performed as a group. On appeal, the petitioner seeks to change the petition's validity dates to allow for the appeal process.

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(C) states that: "[a] P-3 classification applies to an artist or entertainer who is coming temporarily to the United States, either individually, or as part of a group . . . to perform . . . under a commercial or noncommercial program that is culturally unique."

The regulation at 8 C.F.R. § 214.2(p)(2)(ii)(C) states, in pertinent part: "[p]etitions for P nonimmigrant aliens shall be accompanied by . . . an explanation of the nature of the events or activities."

The regulation at 8 C.F.R. 214.2(p)(3) provides, in part: "[g]roup means two or more persons established as one entity or unit to perform or to provide a service."

The regulation at 8 C.F.R. 214.2(p)(6)(i) states:

(A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

(A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the

alien's or the group's skill in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or

(B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and

(C) Evidence that all of the performances or presentations will be culturally unique events.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary comprised a group as defined in the regulations. The director noted that only three of the thirteen named beneficiaries had been named on a previously approved petition for P-3 classification.

According to the evidence on the record, [REDACTED] performed as a drummer in Papa Wemba's Viva La Musica then in La Nouvelle République. He released three solo albums and four videos. There is no evidence that the beneficiaries as a group released any albums or videos. In reply to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] of the New Wave African World, that stated that "all of the musicians and dancers will have performed with Awilo Longomba off and on, most of them on multiple occasions." The petitioner submitted untranslated review articles featuring Luis Awilo Longomba. The record is devoid of evidence that the 13 named beneficiaries have performed together as a group with the exception of the letter of the petitioner's consultant, [REDACTED]. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiaries would be performing solely at culturally unique events. The initial itinerary merely listed the cities and dates of performances. In response to a request for additional evidence, the petitioner submitted a letter from its consultant that stated, "virtually all the venues listed will be for African dances . . . with two exceptions" The petitioner also submitted a more detailed itinerary that lists the specific venues where the beneficiary would perform. Nonetheless, the evidence is insufficient to establish that the events would be culturally unique. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner provided CIS with a favorable consultation from the American Federation of Musicians that states, "these French performer(s) meet the standards for cultural uniqueness." The consultation does not state the basis for the opinion expressed. Consultations are merely advisory and are not binding on CIS. 8 C.F.R. § 214.2(p)(7)(i)(D).

It is noted that the petitioner submitted untranslated copies of a contract and review articles. Any document containing foreign language submitted to CIS must be accompanied by a full English translation. See 8 C.F.R. § 103.2(b)(3).

Beyond the decision of the director, the petitioner failed to establish that the beneficiaries' performance would be culturally unique. No evidence was submitted as required under the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). Since the appeal will be dismissed for the reasons discussed above, these issues will not be analyzed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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ORDER: The appeal will be dismissed.